

FILED UNDER SEAL

EXHIBIT 1

CONFIDENTIAL

CONDENSED

1
2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

4 ----- x
5 JAMES ZIMMERMAN, PHILIP CULHANE,
6 DAVID HILTBRAND, WILLIAM JACKSON,
7 GEORGE ZAROU, JOHN JOSEPH PAGGIOLI,
8 "JOHN DOE II," "JOHN DOE III," and
9 "JOHN DOE IV,"

Plaintiff,

10 - against -

11 POLY PREP COUNTRY DAY SCHOOL,
12 WILLIAM M. WILLIAMS, DAVID B. HARMAN, AND
13 VARIOUS MEMBERS OF THE POLY PREP BOARD OF
14 TRUSTEES, WHOSE NAMES ARE CURRENTLY UNKNOWN
15 AND THUS DESIGNATED AS "JAMES DOE I-XXX,"
16 Defendants.

17 ----- x
18 Case No. 09 CV 4586(FB)

19 June 16, 2011
20 10:15 a.m.

21 EXAMINATION BEFORE TRIAL OF
22 Defendant, DAVID HARMAN, held at the Law Office
23 of O'Melveny & Myers, LLP, Times Square Tower,
24 7 Times Square, New York, New York 10036,
25 pursuant to Order, before a Notary Public of
the State of New York.

* * *
23 SANDY SAUNDERS REPORTING
24 254 South Main Street
25 Second Floor
New City, New York 10956
(845) 634-7561

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1 - David Harman -
 2 the 1971 Poly Prep baseball team?
 3 A. No.
 4 Q. Looking at Page 121.
 5 Is that document in your
 6 handwriting?
 7 A. No.
 8 Q. Do you know whose handwriting this
 9 is?
 10 A. I don't know.
 11 Q. Did you ever discuss with Mr.
 12 Williams whether Mr. Williams offered to fire
 13 Coach Foglietta immediately to David Hiltbrand?
 14 Withdrawn; I'll ask a clearer
 15 question.
 16 Did Mr. Williams ever tell you
 17 that he had told Mr. Hiltbrand that if Mr.
 18 Hiltbrand wanted Mr. Williams to fire Coach
 19 Foglietta immediately he would have done so?
 20 A. Did he tell me verbally?
 21 Q. Verbally or in writing.
 22 MR. KOHN: We saw that in writing
 23 earlier.
 24 A. Yes, he told me that.
 25 Q. What did you tell you verbally?

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1 - David Harman -
 2 A. I don't remember; I just remember
 3 it.
 4 Q. You don't remember if that was a
 5 telephone conversation, or in-person, or a
 6 written document?
 7 A. No.
 8 Q. Do you recall David Berger
 9 contesting that assertion?
 10 A. Yes.
 11 Q. What did Mr. Berger say about it
 12 if you recall?
 13 MR. KOHN: Objection to the form
 14 of the question.
 15 MR. MULHEARN: Withdrawn.
 16 Q. Did Mr. Berger tell you that Mr.
 17 Hiltbrand took offense to that assertion?
 18 A. Yes, he did.
 19 Q. Did you talk to Mr. Berger about
 20 that issue after Mr. Berger told you Mr.
 21 Hiltbrand took offense to that assertion?
 22 A. The conversation went on; I don't
 23 know.
 24 Q. Did it concern that issue?
 25 A. I don't know.

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1 - David Harman -
 2 Q. Did you ever tell Mr. Williams
 3 that Mr. Berger and Mr. Hiltbrand refuted his
 4 assertion that he had told Mr. Hiltbrand that
 5 he would fire Mr. Foglietta immediately if Mr.
 6 Hiltbrand so desired?
 7 MR. KOHN: Objection to the form
 8 of the question.
 9 A. I don't remember.
 10 Q. Do you have any idea who wrote
 11 Document 121?
 12 MR. KOHN: I think he's testified
 13 to that, but --
 14 MR. MULHEARN: His answer was no;
 15 right?
 16 MR. KOHN: Yes.
 17 A. No.
 18 MR. MULHEARN: Can you excuse me
 19 for a moment?
 20 (Whereupon a break was taken from
 21 3:05 p.m. to 3:09 p.m.)
 22 MR. MULHEARN: Mark this, John.
 23 (Document, Handwritten Notes,
 24 marked for identification as Harman Exhibit
 25 11.)

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1 - David Harman -
 2 Q. Before I get to questioning you on
 3 this topic.
 4 You were aware, were you not, in
 5 May 2002 that Mr. Williams believed that he had
 6 cause to fire Mr. Foglietta in 1991?
 7 MR. KOHN: Objection to the form
 8 of the question.
 9 A. Only what he stated in his memo
 10 about his recollection.
 11 Q. He told you he told Mr. Hiltbrand
 12 that he would fire Mr. Foglietta if Mr.
 13 Hiltbrand wanted him to do so?
 14 A. Not in '91.
 15 Q. Did he indicate that was a cause
 16 to fire Mr. Foglietta in '91?
 17 MR. KOHN: Did he indicate in 2002
 18 that he had cause in 1991?
 19 MR. MULHEARN: Yes.
 20 MR. KOHN: Not the Witness.
 21 A. Kevin, I wasn't there; I don't
 22 know if it was a cause or not.
 23 That's what he said.
 24 Q. He said what?
 25 A. That's what he said.

<p style="text-align: right;">210</p> <p>1 - David Harman -</p> <p>2 time?</p> <p>3 A. I don't remember.</p> <p>4 Q. Did Mr. Williams tell you about</p> <p>5 that issue at any time in the year 2002?</p> <p>6 A. Again, I don't know where I heard</p> <p>7 it from; who I heard it from.</p> <p>8 Q. You don't recall whether it was</p> <p>9 Mr. Williams or somebody else?</p> <p>10 A. No.</p> <p>11 Q. You just heard it from someone?</p> <p>12 A. I just remember hearing that</p> <p>13 detail.</p> <p>14 Q. Did you hear that detail prior to</p> <p>15 the initiation of the lawsuit in this case in</p> <p>16 October 2009?</p> <p>17 MR. KOHN: Objection to form.</p> <p>18 A. Yes.</p> <p>19 Q. After you heard about that detail</p> <p>20 did you ever talk to Mr. Williams or inquire</p> <p>21 with him about it?</p> <p>22 A. I don't recall.</p> <p>23 Q. Did you ever notify Peter Sheridan</p> <p>24 of the issue of whether or not -- Withdrawn.</p> <p>25 Did you ever notify Peter Sheridan</p>	<p style="text-align: right;">212</p> <p>1 - David Harman -</p> <p>2 MR. KOHN: Objection to the form</p> <p>3 of the question.</p> <p>4 MR. MULHEARN: Withdrawn.</p> <p>5 Q. At some point the Sheridan</p> <p>6 investigation was terminated by Poly Prep;</p> <p>7 correct?</p> <p>8 MR. KOHN: Objection to form.</p> <p>9 A. Yes.</p> <p>10 Q. Who made the decision to terminate</p> <p>11 that investigation?</p> <p>12 A. Specifically, I don't know.</p> <p>13 Q. Did the Board of Trustees?</p> <p>14 A. I don't know.</p> <p>15 Q. Was it you?</p> <p>16 A. I don't remember terminating him.</p> <p>17 He saw a group of people; he</p> <p>18 conducted interviews; and that was the end of</p> <p>19 his retention.</p> <p>20 Q. Well, do you remember Mr. Sheridan</p> <p>21 telling you he was completed -- he had</p> <p>22 completed his investigation of sexual abuse</p> <p>23 issues at Poly Prep?</p> <p>24 MR. KOHN: Objection to the form</p> <p>25 of the question.</p>
<p style="text-align: right;">211</p> <p>1 - David Harman -</p> <p>2 of your knowledge of a letter stuffed in the</p> <p>3 faculty mailboxes in 1990 or 1991 concerning</p> <p>4 Phil Foglietta?</p> <p>5 MR. KOHN: Objection to the form</p> <p>6 of the question.</p> <p>7 A. Well, I'm not sure when I heard</p> <p>8 that. So if I hadn't heard it before we</p> <p>9 retained Mr. Sheridan I wouldn't have.</p> <p>10 Q. You're not sure if you heard it</p> <p>11 before or after?</p> <p>12 A. No.</p> <p>13 Q. You may have heard it before Mr.</p> <p>14 Sheridan was finished with his investigation;</p> <p>15 correct?</p> <p>16 A. I may have.</p> <p>17 Correction.</p> <p>18 My recollection is afterward.</p> <p>19 Q. More likely than not?</p> <p>20 A. Yes.</p> <p>21 Q. You heard that detail sometime</p> <p>22 after Mr. Sheridan was completed?</p> <p>23 A. Yes.</p> <p>24 Q. Who made the decision to terminate</p> <p>25 the Sheridan investigation?</p>	<p style="text-align: right;">213</p> <p>1 - David Harman -</p> <p>2 A. I remember him telling me he had</p> <p>3 completed his interviews.</p> <p>4 Q. Did Mr. Sheridan ever tell you he</p> <p>5 wanted to do further investigation of sexual</p> <p>6 abuse issues at Poly Prep?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did Mr. Sheridan ever tell you</p> <p>9 there were certain follow-up issues that he</p> <p>10 needed to review to get a more complete picture</p> <p>11 of the sexual abuse issues at Poly Prep?</p> <p>12 A. No, I don't recall that.</p> <p>13 Q. Did anyone on the Poly Prep Board</p> <p>14 of Trustees tell you that Peter Sheridan had</p> <p>15 wanted more time to complete a broader</p> <p>16 investigation as to sexual abuse issues at Poly</p> <p>17 Prep?</p> <p>18 MR. KOHN: Objection to the form</p> <p>19 of the question.</p> <p>20 A. No.</p> <p>21 MR. MULHEARN: Mark this, John.</p> <p>22 (Document, Handwritten Notes dated</p> <p>23 11/2/02, marked for identification as Harman</p> <p>24 Exhibit 12.)</p> <p>25 Q. Mr. Harman, I'm showing you a</p>

<p>234</p> <p>1 - David Harman -</p> <p>2 season?</p> <p>3 A. Yes.</p> <p>4 Q. Right.</p> <p>5 So they were in a much better</p> <p>6 position to personally know about inappropriate</p> <p>7 sexual misconduct; correct?</p> <p>8 A. Nothing prohibited them from</p> <p>9 coming forward.</p> <p>10 Q. Except they didn't know about the</p> <p>11 investigation?</p> <p>12 MR. KOHN: Objection; assumes</p> <p>13 facts not in evidence.</p> <p>14 Q. To your knowledge did Mr.</p> <p>15 Bernieri know Poly Prep was conducting an</p> <p>16 investigation through Peter Sheridan about</p> <p>17 sexual abuse issues involving Coach Foglietta?</p> <p>18 A. He knew about the allegations,</p> <p>19 right; the letters that went out.</p> <p>20 Q. So he knew about the allegation;</p> <p>21 right?</p> <p>22 A. Right.</p> <p>23 So he had ever opportunity to come</p> <p>24 forward if he was there and had seen someone.</p> <p>25 He didn't have to be part of some outside</p>	<p>236</p> <p>1 - David Harman -</p> <p>2 Mr. Patton about the issue of sexual misconduct</p> <p>3 of Mr. Foglietta in that period of time?</p> <p>4 MR. KOHN: Objection; asked and</p> <p>5 answered.</p> <p>6 A. I had a conversation with him.</p> <p>Redacted per 1/3/12 Court Order</p> <p>13 Q. Did the name James Esposito ever</p> <p>14 come up during the course of the Sheridan</p> <p>15 investigation in 2002, 2003?</p> <p>16 MR. KOHN: Objection to the form</p> <p>17 of the question.</p> <p>18 A. I don't remember. I don't</p> <p>19 remember him -- his name coming up.</p> <p>20 Q. You don't recall if Mr. Williams</p> <p>21 ever told you he had a meeting with Mr.</p> <p>22 Esposito after he received Mr. Hiltbrand's</p> <p>23 letter in 1991?</p> <p>24 A. No.</p> <p>25 Q. Do you recall Mr. Williams ever</p>
<p>235</p> <p>1 - David Harman -</p> <p>2 objective District Attorney investigation; he</p> <p>3 can come forward.</p> <p>4 Everyone knew about it.</p> <p>5 Q. Did you send the October 28, 2002</p> <p>6 letter to every single alumni at Poly?</p> <p>7 A. All that we have in the database.</p> <p>8 They certainly knew about this</p> <p>9 from faculty members.</p> <p>10 Q. Well, Mr. Patton didn't know about</p> <p>11 it, did he?</p> <p>12 A. I'm sure he did.</p> <p>13 Q. What did he know about?</p> <p>14 A. I don't know what he knew about</p> <p>15 it. He got a letter as an alumnus.</p> <p>16 Q. The letter that the Board was</p> <p>17 conducting an investigation; correct?</p> <p>18 A. He knew about the allegations;</p> <p>19 right.</p> <p>20 Q. You're certain Mr. Patton after</p> <p>21 October 28, 2002 was an alumni who received the</p> <p>22 letter; correct?</p> <p>23 A. Yes; and as a member of the</p> <p>24 school.</p> <p>25 Q. Do you recall any discussions with</p>	<p>237</p> <p>1 - David Harman -</p> <p>2 telling you that in 1991 James Esposito told</p> <p>3 him there were rumors amongst the alumni that</p> <p>4 Mr. Foglietta was molesting students?</p> <p>5 A. No, he never told me that.</p> <p>6 Q. Have you ever talked to James</p> <p>7 Esposito?</p> <p>8 A. I don't think so. I don't think</p> <p>9 I've ever met him; maybe once.</p> <p>10 Q. Not about sexual abuse issues?</p> <p>11 A. No, no. At an alumni event; at</p> <p>12 Homecoming.</p> <p>13 Q. Can I see what you have in front</p> <p>14 of you, sir?</p> <p>15 A. (Handing.)</p> <p>16 Q. Thank you.</p> <p>17 MR. MULHEARN: Let's take a break.</p> <p>18 (Whereupon a break was taken from</p> <p>19 4:05 p.m. to 4:12 p.m.)</p> <p>20 Q. Mr. Harman, to your knowledge was</p> <p>21 Coach Foglietta fired by Poly Prep or did he</p> <p>22 retire?</p> <p>23 MR. KOHN: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I understand he retired.</p>